

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(8)

O.A./T.A. No. 978 /19 92 Decided on: 15.2.96

S.K. Vaish APPLICANT(S)
(By Shri Sant Lal Advocate)

VERSUS

U.O.I. & Ors. RESPONDENTS

(By Shri V.K. Rao Advocate)

CO RAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE SHRI/SMT./DR.

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal ? No

S.R. Adige
(S.R. ADIGE)
Member (A)

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 978 of 1992

New Delhi, dated the 15th February, 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)

Shri S.K. Vaish,
S/o Shri M.L. Vaish,
C/o Shri Sant Lal,
Advocate,
C-21(B), New Multan Nagar,
Delhi-110056.

..... APPLICANT

(By Advocate: Shri Sant Lal)

VERSUS

1. Union of India through
the Secretary,
Ministry of Communications,
Sanchar Bhawan,
New Delhi.

2. The Chief General Manager,
Telephones,
Kidwai Bhawan,
New Delhi.

3. The Chief General Manager,
Telephones,
Rajasthan Telecom. Circle,
Jaipur-8.

..... RESPONDENTS.

(By Advocate: Shri V.K. Rao)

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Shri S.K. Vaish, Asstt. Engineer (Retd.), Office of the Chief General manager, Telephones, Delhi has impugned the orders of 18/22.7.85 holding up his crossing E.B. w.e.f. 1.3.84 (Ann. A-3); orders dated 20/26.5.86 holding back his crossing E.B. w.e.f. 1.3.85 and 1.3.86 (Ann.A-2) and letter dated 7.2.92 finding the

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applicant unfit to cross E.B. w.e.f. March, 1984 to March, 1985 (Ann. A.1).

2. The applicant's case is that he joined as Junior Engineer in Oct. 1958 and was promoted as Asstt. Engineer on officiating basis in 1976 and was regularised in April, 1979. He was proceeded against departmentally vide Memo dated 2.2.83 which concluded with the penalty of compulsory retirement vide order dated 30.6.86. Upon filing an appeal the order of compulsory retirement was set aside vide order dated 10.6.88 and he was ordered to be reinstated vide order dated 12.9.88, and accordingly he joined in Delhi on 16.9.88. Meanwhile by impugned orders at Ann. A-3 and Ann. A-2 he was informed that he had not been found fit to cross the E.B. w.e.f. 1.3.84 and 1.3.85 and 1.3.86 by the DPC while the departmental proceedings were still pending.

3. I have heard Shri Sant Lal for the applicant and Shri V.K. Rao for the Respondents and have perused the materials on record including the applicant's C.R. Dossier which was produced for my inspection.

4. The first ground taken is that the DPC's findings should have been kept in a sealed cover while the departmental proceedings were pending and upon acceptance of his appeal he was entitled to benefit of sealed cover procedure and cross of E.B. from due date. The DPC did not find the applicant fit to cross the E.B. w.e.f. 1.3.84 and 1.3.85.

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fit to cross the E.B. w.e.f. 1.3.84; 1.3.85 and 1.3.86 on the basis of his CRs. The fact that these findings were not placed in a sealed cover does not change the contents of the findings. This argument therefore fails.

5. The second ground urged is that the time schedule was not followed in considering the E.B. cases. The case for crossing E.B. in 1984 was to have been considered in January, 1984 but was considered on 16.7.85 which seriously prejudiced the applicant. Reference has been made to the CAT ruling in 1991 (1) ATJ 605 Mrs. K. Kaur Vs. UOI requiring E.B. cases to be considered on a year to year basis. Even if there was some delay in considering the applicant's E.B. case in 1984 that alone would not warrant my interference in this matter when the DPC found the applicant unfit to cross the E.B. in 1985 and again in 1986. The case of H.N.Ahmedi Ali Vs. Secretary, Tourism Deptt. 1990(3) SLJ 142 (CAT, Calcutta) relied upon by the applicant is also different and hence distinguishable on facts because there the applicant was due to cross the E.B. in 1975 but no DPC was held, but in the present case the applicant was due to cross E.B. w.e.f. 1.3.84 and the DPC was held but with some delay. Hence this ground also fails.

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6. Next it has been urged that the applicant had earned some adverse C.R. entries against which his appeals/representations were still pending and should not have been acted upon to deny him crossing of E.B. Reliance has been placed on Gurdial Singh Fiji Vs. State of Punjab 1979 SL 299 SC; A.K. Choudhary Vs. State of Bihar 1984 (2) SCR 297; and B.S.Chopra Vs. State of Punjab 1987 (1) ATR 513 SC. However, in a more recent ruling of the Hon'ble Supreme Court in B.N. Das and another Vs. Chief DMO, Baripada JT 1992 (2) SC 1 it has been held that an order of compulsory retirement is ^{not} liable to be quashed by a court merely on the ground that while passing it uncommunicated adverse remarks were also taken into consideration. Under the circumstance if compulsory retirement based also on uncommunicated remarks are not to be interfered with, denial of crossing E.B. on the basis of adverse remarks which have been communicated, but against which certain appeals/representations are pending would under no circumstance warrant interference. Furthermore, I note that it is not that all the applicant's appeals/representations were ^{pending} ~~rejected~~. His appeal against the adverse remarks for 1979-80 were rejected as the applicant himself admits in his O.A.

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7. Next it has been urged that in Govt. of India order No.28 below Rule 11 CCS (CCA) Rules the minor penalty of censure, withholding of increment and recovery from pay is no bar for promotion or crossing of E.B. and in the present case the applicant has not received even such a minor penalty. Hence it is contended that the applicant's case for crossing of E.B. is on a strong footing. The applicant earned adverse remarks for three consecutive years namely 1979-80; 1980-81 and 1981-82. Taking into account these adverse remarks, the DPC held that the applicant did not have a record of service satisfactorily enough¹ for his being allowed to cross the E.B., which as the very term implies is a barrier an employee is allowed to cross at a particular stage in his pay scale, if he found to be efficient and his work is satisfactory in all respects. The assessment is made by a DPC on the basis of service records. In such case the Tribunal cannot substitute its own assessment for that of the DPC. Nor can it be legitimately contended that because a censure or withholding of one increment is no bar to crossing of E.B., therefore, an assessment by a duly constituted DPC on the basis of adverse remarks recorded for three consecutive years that an employee has an unsatisfactory record of service, cannot also operate as a barrier to his crossing the E.B. Hence this argument also fails.

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8. Next it has been urged that Resp. No.3 (Chief General Manager, Telphones, Rajasthan) had no jurisdiction to consider and decide the applicant's case as communicated in letter dated 7.2.92 (Ann.A-1) as the applicant was not working under him since 28.7.86. The letter dated 7.2.92 merely reiterated the decision already communicated in the impugned letters dated 18/22.7.85 (Ann. A-3) and dated 20/26.5.86 (Ann. A-2) issued by the office of Resp.No.3 under whom the applicant admittedly was working till 28.7.86. Hence this ground also has no merit.

9. Lastly it has been urged that the competent authority did not apply its mind to the DPC's recommendations of 1985 and 1986 and conveyed its decision there on but merely conveyed the DPC's recommendations treating the same as a decision which is violative of FR 25. This contention is also groundless because the order dated 20/26.5.86 merely states that the DPC met on 9.5.86 to review the E.B. case of the applicant and he has not been allowed to cross E.B. w.e.f. 1.3.85 and also from 1.3.86 at the stage of Rs.1000/- and Rs.1040/- on the basis of present available record. The order does not state that the DPC's recommendations are being conveyed that the applicant was not found fit to cross the E.B.

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10. applicant's counsel Shri Sant Lal has relied upon the Hon'ble Supreme Court's judgment in O.P. Gupta Vs. UOI 1988 (1) SLJ 121 but in that case the petitioner was kept under suspension for 11 years and his case was not finalised for 20 years and he was not allowed to cross E.B. through there was no basis for taking such a decision. In the present case the basis is the adverse remarks for the three consecutive years, apart from ~~the fact~~ ^{that} the period of suspension and the duration of the case being nowhere near the period noticed in O.P. Gupta's case. Hence that judgment does not help the applicant.

11. Under the circumstance it cannot be said that the respondents' action is arbitrary, malafide, based on no materials, or perverse such that it warrants judicial interference. That apart I note that the fact that the applicant had not been allowed to cross E.B. w.e.f. 1.3.84 was communicated to him vide order dated 18/21.2.7.85 and the second order was communicated to him on 20/26.5.86. Yet the O.A. was filed on 6.4.92 and hence the respondents have correctly pointed out that is hit badly by limitation.

12. Viewed at from any angle therefore the O.A. fails and is dismissed. *No costs*.

<GK>

S.R. Adige
(S.R. ADIGE)
Member (A)